STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1429

State of Minnesota,
Respondent,

vs.

Thomas James Saros,
Appellant.

Filed July 8, 2013
Affirmed
Stauber, Judge

Itasca County District Court
File No. 31VB11421

Lori Swanson, Minnesota Attorney General, St. Paul, Minnesota; and

John J. Muhar, Itasca County Attorney, Heidi M. Chandler, Assistant County Attorney, Grand Rapids, Minnesota (for respondent)

Megan Treuer, Frank Bibeau, Regional Native Public Defense, Cass Lake, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Schellhas, Judge; and Stauber, Judge.

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

On appeal from his convictions on stipulated facts for minor driving offenses that are civil-regulatory in nature, appellant argues that the district court erred by denying his motion

to dismiss and to transfer the proceedings to tribal court because the district court does not have subject-matter jurisdiction over a tribal member who commits a minor traffic offense on one of his tribe's reservations. Because the district court correctly concluded that it had subject-matter jurisdiction under *State v. Davis*, 773 N.W.2d 66 (Minn. 2009), *cert. denied* 130 S. Ct. 2111 (2010), we affirm.

FACTS

Appellant Thomas Saros is an enrolled member of the Minnesota Chippewa Tribe (MCT). The MCT is a federally recognized Indian tribe consisting of the Ojibwe Indians of the White Earth, Leech Lake, Fond du Lac, Bois Forte, and Grand Portage Reservations and the Mille Lacs Band of Ojibwe Indians. Appellant resides within the boundaries of the Leech Lake Reservation, but is an enrolled member of the White Earth Band.

On February 8, 2011, appellant was cited for driving with expired registration and no proof of insurance, both traffic offenses. Appellant received the citations within the boundaries of the Leech Lake Reservation. Appellant subsequently moved to dismiss the charges for lack of subject-matter jurisdiction and to transfer the proceeding to the Leech Lake Tribal Court.

Following a hearing, the district court concluded that it had subject-matter jurisdiction under *Davis*. Thus, the district court denied appellant's motion to dismiss. Appellant then proceeded with a stipulated-facts trial and was convicted of both offenses. This appeal followed.

D E C I S I O N

Appellant challenges the district court's decision that it had subject-matter jurisdiction to enforce the citations for traffic violations appellant received on the Leech Lake Reservation. "Subject-matter jurisdiction is a court's power to hear and determine cases that are presented to the court." *State v. Losh*, 755 N.W.2d 736, 739 (Minn. 2008). "State jurisdiction over Indians is governed by federal statutes or case law." *State v. R.M.H.*, 617 N.W.2d 55, 58 (Minn. 2000). This court reviews issues of jurisdiction de novo. *Davis*, 773 N.W.2d at 68.

Traditionally, Indian tribes have "retain[ed] attributes of sovereignty over both their members and their territory." *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207, 107 S. Ct. 1083, 1087 (1987) (quotation omitted). This "tribal sovereignty is dependent on, and subordinate to, only the Federal Government, not the States." *Id.* (quotation omitted). In Public Law 280, Congress provided Minnesota with broad criminal and limited civil jurisdiction over Indian reservations in the state, except for the Red Lake Reservation. *State v. Stone*, 572 N.W.2d 725, 728 (Minn. 1997); *see* 18 U.S.C. § 1162(a) (2010); 28 U.S.C. § 1360(a) (2010). "The purpose of this grant was to combat the problem of lawlessness on certain reservations and the lack of adequate tribal law enforcement." *Stone*, 572 N.W.2d at 729 (citing *Bryan v. Itasca Cnty.*, 426 U.S. 373, 379, 96 S. Ct. 2102, 2106 (1976)).

Under Public Law 280, the state's civil jurisdiction is limited and applies only to "private civil litigation involving reservation Indians in state court." *Bryan*, 426 U.S. at 385, 96 S. Ct. at 2109; *see also* 28 U.S.C. § 1360(a) (addressing the states' limited

jurisdiction over civil causes of action involving Indians). The state's civil jurisdiction does not confer general civil regulatory powers to the states over Indians. *Bryan*, 426 U.S. at 390, 96 S. Ct. at 2111-12. The Minnesota Supreme Court has concluded that because driving is generally permitted subject to regulation, speeding and insurance laws are civil/regulatory laws. *Stone*, 572 N.W.2d at 731. Here, it is undisputed that the traffic offenses of which appellant was convicted are civil/regulatory in nature. Accordingly, the state does not have jurisdiction under the authority granted by Public Law 280. *See Stone*, 572 N.W.2d at 731-32.

However, the inapplicability of Public Law 280 does not end our analysis. In the absence of jurisdiction expressly provided by Congress, courts engage in a preemption analysis to determine whether the state has subject-matter jurisdiction. *Davis*, 773 N.W.2d at 69. "State jurisdiction is preempted . . . if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority." *R.H.M.*, 617 N.W.2d at 60 (quoting *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334, 103 S. Ct. 2378, 2386 (1983)).

The Minnesota Supreme court has evaluated the application of state jurisdiction over traffic violations committed on Indian reservations, with varying results depending upon the membership status of the individual over whom jurisdiction was sought. In *Stone*, the supreme court determined that the state did not have jurisdiction over traffic offenses committed by a member of the White Earth Band of the MCT on the White Earth Reservation. 572 N.W.2d at 731-32. Noting "the limited conditions under which

the Supreme Court has allowed on-reservation jurisdiction over member Indians," the Minnesota Supreme Court held that the state interests at stake in the enforcement of traffic offenses did "not establish[ ] extraordinary circumstances with which to overcome 'the right of reservation Indians to make their own laws and be ruled by them.'" *Id.* at 732 (quoting *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142, 100 S. Ct. 2578, 2583 (1980)). Accordingly, the court held that Minnesota could not enforce the traffic laws against Stone in state court. *Id.* at 731-32.

Three years later, in *R.M.H.*, the supreme court reaffirmed that traffic offenses are civil/regulatory. 617 N.W.2d at 60. In that case, the offense was committed on the White Earth Reservation, but R.M.H. was not a member of the White Earth Band. *Id.* at 57, 61. Rather, R.M.H. was an enrolled member of a different federally recognized tribe– the Forest County Potawatomi Community in Wisconsin. *Id.* at 57. The supreme court recognized that "Indian sovereignty is at its strongest in the context of self-governance, that is, authority over members of the governing tribe. In contrast, the strength of Indian sovereignty is less with respect to authority over nonmembers of the governing tribe, including nonmember Indians." *Id.* at 61. The court held that with respect to the interests of the tribe, nonmember Indians "are, for practical purposes, the same as non-Indians." *Id.* at 63. The court also analyzed the federal interests in tribal self-governance, economic development and self-sufficiency, and whether there was pervasive federal regulation, and weighed those factors against the "strong" state interest in "regulating the safe flow of traffic." *Id.* at 64-65. The supreme court ultimately concluded that Minnesota's strong interest in regulating the flow of traffic on state-

operated and maintained highways outweighed the minimal federal interests at stake. *Id.* Thus, the court upheld enforcement of the state law in state court. *Id.*

More recently, in *Davis*, the supreme court considered an issue similar to this case regarding the authority of the state to assert subject-matter jurisdiction over a traffic offense by a member of the Leech Lake Band that occurred on the Mille Lacs Reservation. 773 N.W.2d at 68. The supreme court first accepted that the state has a strong interest in "ensuring traffic safety on state highways." *Id.* at 72. Despite the fact that both reservations are part of the MCT, the supreme court then concluded that "there is no indication that enforcement of Minnesota traffic laws is inconsistent with federal pronouncements on the topic," and enforcing state laws against Davis in state courts would not interfere with federal or tribal interests. *Id.* at 72-73. Significantly, the supreme court recognized that the usually strong interest in tribal self-governance was not as compelling in *Davis*:

> [I]f Davis were a member of the Mille Lacs Band, the interest in tribal self-governance would be directly served through the Band's enforcement of its laws against one of its members in its tribal court for conduct that occurred on the reservation. But Davis is not a member of the Mille Lacs Band and so operation of state law to Davis'[s] on-reservation conduct does not infringe on the Band's self-governance interest to the same extent as in [*Stone*].

Id. at 74. Therefore, the supreme court held that the state court had jurisdiction to enforce state traffic laws against Davis. *Id.*

The facts here are directly analogous to *Davis*. The offenses appellant allegedly violated are minor traffic offenses, which are civil/regulatory in nature. Moreover,

although appellant is an enrolled member of the White Earth Band, the traffic offenses occurred on the reservation of the Leech Lake Band, where he resides, we are constrained by *Davis*. Under *Davis*, because appellant is not a *member* of the Leech Lake Band, operation of state law to appellant's on-reservation conduct would not infringe on the Leech Lake Band's self-governance interest to the same extent as if appellant were a member of the Band. *See* 773 N.W.2d at 74.

Appellant argues that *Davis* was wrongly decided because each of the Bands are components of the MCT, and the *Davis* decision erroneously distinguishes them from the tribe. To support his claim, appellant discusses at length the MCT's governmental structure, which he claims demonstrates that a membership in a particular Band of the MCT is not indicative of a differentiation between the individual Bands and the MCT. Appellant contends that to distinguish among Band membership is to treat each Band as a separately recognized tribe, which is not within the state's authority to do.

Appellant's argument was rejected by the supreme court in *Davis*. In considering the argument, the supreme court analyzed the Mille Lacs Band statutes and the MCT constitution. *Davis*, 773 N.W.2d at 74. The court stated that "the MCT constitution does not possess any apparatus for law enforcement or judicial decision-making. If Davis were to be prosecuted in tribal court, the offense at issue would be governed by a Mille Lacs Band law, and would be tried in a Mille Lacs Band tribal court[.]" *Id.* Thus, the supreme court also rejected Davis's argument that the tribal interest in self-governance rests with the entire MCT, not just with the individual Band on whose reservation the offense took place. *Id.*

We acknowledge, however, that the restriction on inter-reservation prosecution makes little sense.[1] It is undisputed that the MCT is a federally recognized tribe, and that the six bands that make up the MCT are not individual federally recognized tribes, but are "component reservations." *Davis*, 773 N.W.2d at 75 (Page, J., dissenting) (citing *Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs*, 73 Fed. Reg. 18,553, 18,555 (Apr. 4, 2008)). As Gary Frazier, the executive director of the MCT testified, it is impossible to be a member of one of the individual bands but not a member of the MCT. Nonetheless, the *Davis* decision holds that the differentiation between bands is dispositive as to whether tribal court has jurisdiction over the matter. In other words, under *Davis*, despite the fact that appellant is

[1] *Davis* relies on the distinction between tribes and bands to conclude that a member of one band of the Minnesota Chippewa Tribe is not an Indian when driving on another MCT Band's reservation. *See Davis*, 773 N.W.2d at 75 (Page, J. dissenting). But the determination of who is an Indian and who is a member of a tribe is made by the tribe and not a state or federal court. *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56, 98 S. Ct. 1670, 1675-76 (1978) (involving lawsuit under the Indian Civil Rights Act challenging ordinance denying membership in the tribe to children of female members who married outside the tribe). The MCT does not treat its six MCT bands as separate tribes. *See* MCT Const. art., I § 3 (noting purpose of the MCT is "to promote the general welfare of the members to the Tribe"); art. II, § 1 (describing membership in the MCT as persons with Minnesota Chippewa Indian blood); art., XIII, § (providing all members of the MCT "shall be accorded by the governing body equal rights, equal protection, and equal opportunities to participate in the economic resources and activities of the Tribe"). And the federal government recognizes the MCT as the tribe. *See* 25 C.F.R. § 81.1(i) (defining Indian as all persons who are members of tribes recognized by and receiving services from the Bureau of Indian Affairs); 65 FR 13298-01 (2000) (recognizing the Minnesota Chippewa Tribe with its six component reservations as the tribal entity entitled to receive funding and services from the BIA). Although state courts have no role in determining tribal membership, this is what occurred in *Davis*. Because the court of appeals is an error-correcting court bound by precedent, we must follow *Davis*. *See State v. Ward*, 580 N.W.2d 67, 74 (Minn. App. 1998); *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1998).

an enrolled member of the MCT, resides on Leech Lake, and the offenses occurred there, the tribe's interest in self-governance is not applicable to his case because his reservation of registration is White Earth. This conclusion seems to conflict with *Stone*, which recognizes that "Indian tribes retain 'attributes of sovereignty over both their members and their territory.'" 572 N.W.2d at 728 (quoting *Cabazon Band of Mission Indians*, 480 U.S. at 207, 107 S. Ct. at 1087). Moreover, there is nothing in the record indicating that the MCT has chosen to relinquish its interest in self-governance. To the contrary, Frazier testified that when the Leech Lake Tribal Court has session and enforces its codes, it acts under the authority that has been delegated from the MCT Constitution. And Frazier added that under this authority, the tribal courts would take cases from an MCT member that is not an enrolled member of their reservation. Thus, in light of the MCT's retention of sovereignty attributes and interest in self-governance, it seems logical to conclude that the state has no jurisdiction over appellant.

But, even if *Davis* was "wrongly" decided as appellant claims, *Davis* is established precedent that we must follow. *See State v. Ward*, 580 N.W.2d 67, 74 (Minn. App. 1998) ("[W]e are not in position to overturn established supreme court precedent."). The district court here thoroughly analyzed the issue and properly concluded that, under *Davis*, it had subject-matter jurisdiction. Accordingly, the district court did not err by denying appellant's motion to dismiss.

Affirmed.