

## IN THE SUPREME COURT OF THE STATE OF MONTANA

SUPREME COURT CAUSE NO: DA-0719

Glenn Robert Gopher, Estate of Thane Gopher,  
Blair Gopher, Miranda Gopher, Melinda Gopher  
And Mary Gopher Parenteau, APPELLANTS

APPELLANT'S REPLY

v.

Mike Gopher, APPELLEE

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ON APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT,JUDGE THOMAS MCKITTRICK PRESIDING

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Cause No: ADP-10-127 THE ESTATE OF DOROTHY MCGILLIS GOPHER

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APPEARANCES

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In Reply, Appellants raise subject matter and personal jurisdiction claims, recognizing complex tribal and federal issues; arguing Congressional plenary power prevents state jurisdiction, in U.S. Const., art. 1, § 8. The Blackfeet Court is the proper dispositive legal forum, we fully deny claims of Appellee. This case is not only colorable to the stated policy of *Big Spring*, affirming tribal jurisdiction: case law presented here requires it.

I. TRIBAL JURISDICTION: THE PARTIES ARE TRIBAL MEMBERS

The Blackfeet Court prematurely or through error, negated subject matter jurisdiction in January hearing, but left the issue of personal jurisdiction intact. Appellants address personal jurisdiction: Appellants claim tribal membership to be of sufficient basis for jurisdiction. The tribal court determination is unreviewable in federal court pursuant to Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978). In a partial challenge of the January order of the Blackfeet, Appellants submit a new Motion to the Blackfeet Court, claiming premature denial of subject matter jurisdiction, citing Milliken v. Meyer, 311 U.S. 457, 462-463 (1940), providing both citizenship and domicile are bases for general jurisdiction. The late Thane Gopher was a

resident of the reservation at the time of death on June 2, 2012. The tribe asserted jurisdiction in probate proceedings. Retained tribal powers include jurisdiction to determine ownership of tribal property without regard to Indian Country. Chilkat Indian Village v. Johnson, 870 F.2d 1469 (9<sup>th</sup> Cir. 1989) provides. This controlling precedent must be applied.

Addressing subject matter and personal jurisdiction of conduct of Public Administrator Boland, the Appellants file suit on claims of breach of fiduciary duty arising from this probate, based on the second *Montana* exception: Montana v. United States, 450, U.S. 544 565-566 (1981). Appellants argue Boland engaged in conduct that "threatens or has some direct effect on the political integrity, the economic security, or health or welfare of the tribe, and thus fits within the second Montana exception establishing subject matter jurisdiction." Appellants argue *while the tribal court lacks personal jurisdiction over the defendant because the conduct occurred outside tribal territory such that the defendant lacks "minimum contacts with the forum...it is "sufficient to establish personal jurisdiction" over him, Int'l. Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).*

Water Wheel Camp Recreational Area, Inc. v. LaRance, 642  
F.3d 802 (9th Cir. 2011) binds non-tribal member contracted  
parties in tribal forum.

II. APPELLEE'S CLAIMS ARE MOOT: BEAR CLAW TRIBE, INC. and  
AHONTOAYS PETITIONER #172 (INTERIOR DEPT.) ARE SEPARATE  
BANDS: FR 73-30146 BARS BEAR CLAW INTERVENTION.

Appellants state Appellees claims are rendered moot by  
series of facts the Appellee is concealing from the courts.  
The 1775 Treaty of Ft. Pitt, and/or 1819 Saginaw Treaty as  
likely source laws of the Robert Gopher 13 star flag bundle:  
signor Kitchmokooman, probable predecessor to Ahontoays,  
(Neezhobenais, Repeating Thunder) Loud Thunder—Jim Gopher,  
and Listening Thunder—Robert Gopher. Appellants cite oral  
tape: contained in withheld evidence by Public  
Administrator Boland. Treaty claims research is incomplete  
and on-going, the oral evidence is under work product  
doctrine rules asserted by Appellants (for benefit of  
unenrolled Robert Gopher descendants). The Appellants have  
a few dozen descendants; 1. Robert Gopher's clan wished to  
preserve claims of descendants now and in the future. 2.  
These descendants are of primary Ojibway heritage, and do  
not qualify for membership in the Blackfeet Tribe. 3. They

are not part of the Bear Claw Tribe (*Bear Claw I,II*).

The state order upholds one provision of Robert Gopher's will and strikes the rest: is highly specious. Appellants cite *Chilkat* in support of tribal jurisdiction as dispositive of Dorothy Gopher's estate, The 9<sup>th</sup> Circuit requires the tribal forum; non-reviewable in federal court.

Appellants cite the Major Crimes Act, 18 U.S.C. §§ 1153,3242 (1988) reference the testimony of Phyllis Parker, of the Rocky Boy Indian Reservation: presented by Appellee as an expert witness, (transcript). Appellants allege Parker's testimony in the August 17, 2012 probate hearing is felony perjury. Parker willfully misled the court and concealed the record in *Bear Claw I* and *Bear Claw II*: raising a federal criminal preemption under the Act. The Appellants may seek a related federal action, however: *Chilkat* requires exhaustion of tribal remedies, and mandates the return of clan property to the rightful possessors. For this reason, the state order is void.

Two prior Congressional actions and two Court of Federal Claims rulings prevent Appellee, and Phyllis Parker from advancing moot claims. Appellants cite Cong. Ref. No. 92-719X | July 12, 1996, and related Court of Claims rulings

Bear Claw Tribe, Inc. v. The United States of America, 36  
Fed.Cl. 181 (1996), and Cong. Ref. No 92-719X | March 13,  
1997, Bear Claw Tribe, Inc. v. United States of America, 37  
Fed.Cl. 633 (1997). Herein: *Bear Claw I* and *Bear Claw II*.  
Bear Claw Tribe, Inc. did not timely appeal these rulings  
that dismissed their claims.

The incomplete letter of intent for Ahontoays federal  
recognition dated February 1, 1996, signed by the late  
Robert Gopher, (petitioner #172)  
(<http://www.bia.gov/cs/groups/xofa/documents/text/idc-020619.pdf> ). Gopher was aware of Bear Claw claims and  
visited Leo Graybill, tribe's counsel, in 1993. (The bill  
passed without Gopher's knowledge in 1992). Parker is not  
Ahontoays affiliated, a group subject to FR 73-30146, a  
federal process. Price v. Hawaii, 764 F.2d. 623, 627 (9<sup>th</sup>  
Cir. 1985), requires courts to defer to federal  
acknowledgment process. Parker is barred due to *Bear Claw I*  
and *Bear Claw II*: no prior denied tribal group can later  
join a petitioning group pursuant to federal regulatory law  
contained in 25 CFR Part 83, the federal recognition laws.

Parker was founder of the Bear Claw Tribe, Inc., in  
records of the Secretary of State of Montana (#ID, D072999).

The date of incorporation is February 18, 1992, Registered Agent is Phyllis Parker, 3406 6<sup>th</sup> Ave. No, Box 7295, Great Falls, MT 59403. Congressional records reflect action taken on behalf of the Bear Claw Tribe, Inc. (Bill Summary & Status, 102<sup>nd</sup> Congress 1991-1992). Federal records reflect two distinct groups. Bear Claw sought Congressional plenary power in its claim with scant legal evidence. Appellants cite *Bear Claw I* and *Bear Claw II*:

*On Congressional reference involving claim of Bear Claw Tribe, Inc., for compensation for sale of subsistence homestead in Montana acquired for the benefit its members...."*

Congressional plenary power over the affairs of tribes is a long established doctrine, U.S. Const., art. 1, § 8,, Exparte Crow Dog 109 U.S. 556 (1883), U.S. v. Kagama 118 U.S. 375 (1886). Further, Congress has plenary power to determine who is Indian, United States v. Sandoval, 231 U.S. 28 (1913). In addition, Appellants cite: Johnson v. MacIntosh, 21 U.S. 543 (1823), Cherokee Nation v. Georgia, 30 U.S. 1 (1831), and Worcester v. Georgia, 31 U.S. 515 (1832). Worcester upholds our right to bar Appellee, Parker and supporters from Ahontoays band rolls, now and in the future. Both Bear Claw cases found "no fiduciary duty

to give rise to an equitable claim" against the U.S. Claims Court dismissed with prejudice, Parker did not appeal. Notably the federal court did not apply the Indian Reorganization Act upon Bear Claw's claims, therefore, denied this particular group's standing to proceed.

The Courts have held U.S. Const., art. 1, § 8 reserved management of all Indian affairs exclusively for Congress. Justice Marshall interpreted this to mean 1) the states had no right to impose their laws on Indians, 2) the U.S. government owed a duty of protection to the Indians, 3) the States had no such duty, 4) federal Indian law "pre-empted" state laws, this is established doctrine. Here, Congress asserted plenary power in *Bear Claw I and II*, denied a fiduciary duty, barring state jurisdiction.

#### APPRAISAL & TAXATION OF DOROTHY GOPHER'S ESTATE

Should the state order stand, it forces an appraisal of the Gopher family heirloom existing in the family chain of custody for over 200 years. The state may not impose its order, nor force taxation of the prized artifact. In Bryan v. Itasca County, 426 U.S. 373 (1976), the United States Supreme Court held that the State of Minnesota could not impose a tax on a reservation Indian. One member of the

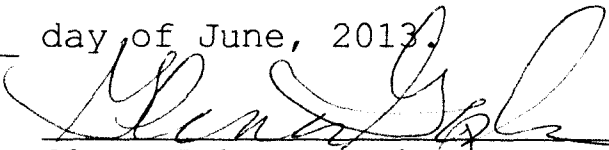


Dorothy's estate, Thane Gopher, was a resident of the Blackfeet Reservation at the time of death, minimum contact.

III. CONCLUSION: APPELLANTS ARE ENTITLED TO RELIEF AND DISMISSAL OF THE ORDER BASED UPON THE CHILKAT PRECEDENT, THE 9TH CIRCUIT DEEMS ARTIFACT POSSESSION AS TRIBAL ISSUE.

The Appellants sufficiently establish tribal subject matter and personal jurisdiction. Most important, the Blackfeet Court retains (subject matter) and personal jurisdiction (*Chilkat*). This specific matter is not reviewable in federal court, this Court must apply *Santa Clara*. Lastly, the Appellee wrongly implies this court renew *Iron Bear*, prior to 2011: improperly applied concurrent jurisdiction, violating controlling federal rules and case law. Appellants point to the policy expressed in *Big Spring* must follow; the court is bound to enforce the retained tribal powers doctrine consistent with *Chilkat*, as a purely tribal issue. The court must remand the state order for dismissal.

Dated this 7<sup>th</sup> day of June, 2013.

  
Glenn Robert Gopher  
(Current PR, Thane Gopher Estate)



Blair Gopher

Melinda Gopher

Miranda Gopher

Mary Gopher

### CERTIFICATE OF SERVICE

I hereby certify that I have filed this Appellants Reply with the Clerk of the Montana Supreme Court and that I have mailed and hand delivered a copy to each attorney of record and any party not represented by counsel as follows:

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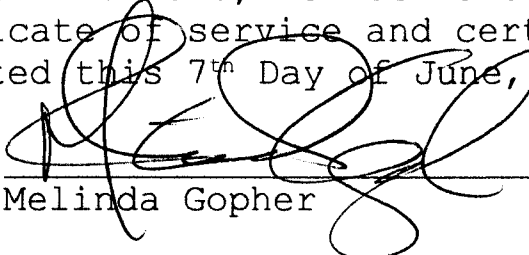
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Dated this 7<sup>th</sup> Day of June, 2013.

Melinda Gopher

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 13(4)(b) of the Montana Rules of Appellate procedure, I certify that this reply is printed in mono-spaced Courier text typeface, 14 points, is double spaced, Microsoft Word 2010, is not more than 5,000 words, excluding certificate of service and certificate of compliance. Dated this 7<sup>th</sup> Day of June, 2013.



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Melinda Gopher