UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Sheryl Rae Lightfoot,

Plaintiff,

vs.

Sally Jewell as Secretary of the Department of the Interior, or her successor, United States Department of the Interior, United States, Shakopee Mdewakanton Sioux Community and Kenneth Jo Thomas,

Defendants.

Case No. 0:13-cv-02985 (DWF-JJK)

Shakopee Mdewakanton Sioux Community's Memorandum In Support Of Motion To Dismiss

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Introduction

Ms. Lightfoot and her husband Kenneth Thomas are getting a divorce. Ms. Lightfoot alleges from her home in British Columbia that Minnesota law must be applied when determining how to share the marital estate and that Tribal law is not applicable because it may be inconsistent with Minnesota law in this regard. Ms. Lightfoot repeatedly pleads that "[w]hether [Tribal] law or Minnesota state law apply *could change* Professor Lightfoot's share of the marital estate, child support and spousal maintenance by $1,000,000.00 or more."[1] There is no jurisdictional basis -- and certainly no precedent -- for hailing any government into Federal Court in order to resolve a speculative choice of law dispute, which has yet to materialize between two private parties in a divorce

[1] Complaint, ¶¶ 46, 76, and 88 (emphasis added).

proceeding. The choice of law question has yet to occur and the speculation that a conflict could result certainly does not provide this Court with jurisdiction over the Shakopee Mdewakanton Sioux Community (the "Tribe") as a defendant in this case. Indeed, no constitutionally cognizable dispute exists between Ms. Lightfoot and the Tribe. At root, Ms. Lightfoot seeks to invoke this Court's jurisdiction to issue an advisory opinion that would purport to control the ongoing proceedings in Tribal Court and the Canadian Court.

Even if Ms. Lightfoot could meet her burden of proof that this Court has jurisdiction over her claim against the Tribe, the Tribe is federally-recognized and is immune from suit. Accordingly, the Tribe files this memorandum in support of its motion to dismiss Ms. Lightfoot's Complaint as it pertains to the Tribe for lack of federal subject matter jurisdiction.

Burden of Proof

"As federal courts are courts of limited jurisdiction, '[i]t is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction.'" Dakota, Minnesota & Eastern R.R. Corp. v. Schieffer, 715 F.3d 712 (8th Cir. 2013), quoting, Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994).

Argument

There are at least four independent reasons why the Court must dismiss Ms. Lightfoot's Complaint as it pertains to the Tribe for lack of jurisdiction:

- First, the Tribe is immune from suit.

- Second, there is no constitutional case or controversy between Ms. Lightfoot and the Tribe.

- Third, the Federal Courts lack jurisdiction to address a speculative choice of law dispute among a Tribal Court and a foreign Canadian Court, to which the Tribe is not a party.

- Fourth, long-standing decisions of the United States Supreme Court foreclose a claim against the Tribe based on Public Law 280 (codified at 28 U.S.C. § 1360), plaintiff's only asserted basis to support jurisdiction over the Tribe.

Each standing alone justifies dismissal of the Tribe from this lawsuit.[2]

Jurisdictional Facts

Ms. Lightfoot's Complaint voices numerous derogatory and conclusory opinions pertaining to the Tribe and its history. These conclusory statements are not entitled to a presumption of truth because this Court is "not bound to accept as true a legal conclusion couched as a factual allegation" when considering a motion to dismiss. Papasan v. Allain, 478 U.S. 265, 286 (1986). "Conclusory statements are not" afforded "the preferential status of assumed truth." Stadin v. Union Electric Co., 309 F.2d 912, 917 (8th Cir. 1962). See also Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) ("the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions."). Further, as demonstrated below, Ms. Lightfoot's allegations regarding the Tribe's federally recognized status are conclusively rebutted by acts of

[2] The Tribe also supports the arguments of Mr. Thomas that the potential choice of law dispute between Ms. Lightfoot and Mr. Thomas should be dismissed pending initial resolution of the issues presented to the Tribal court under National Farmers Union Ins. Co. v. Crow Tribe of Indians, 471 U.S. 845 (1985) and Iowa Mutual Ins. Co. v. LaPlante, 480 U.S. 9 (1987).

Congress and previous decisions of the United States Court of Appeals for the Eighth and, therefore, carry no weight.

I. Sovereign Immunity Requires Dismissal Of Ms. Lightfoot's Claims Against The Tribe For Lack Of Jurisdiction

The Tribe is immune from suit. The Supreme Court held in Santa Clara Pueblo v. Martinez that,

> Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers. This aspect of tribal sovereignty, like all others, is subject to the superior and plenary control of Congress.

436 U.S. 49, 58 (1978). Tribal sovereign immunity precludes a court from hearing any claim against an Indian tribe unless "Congress has authorized the suit or the tribe has waived its immunity." Kiowa Tribe v. Mfg. Technologies, Inc., 523 U.S. 751, 754 (1998). Any alleged waiver by Congress or a tribe "cannot be implied but must be unequivocally expressed." Santa Clara Pueblo, 436 U.S. at 58.

The Eighth Circuit has determined that the Shakopee Mdewakanton Sioux Community is a federally recognized Indian tribe, meaning it possesses sovereign immunity from suit. Smith v. Babbitt, 100 F.3d 556 (8th Cir. 1996); see also Prescott v. Little Six, Inc., 387 F.3d 753, 757 (8th Cir. 2004) (recognizing the "sovereign tribal government" of the Shakopee Tribe). This Court has likewise determined that the Shakopee "Community is a federally recognized Indian tribe" possessing sovereign immunity. Smith v. Babbitt, 875 F. Supp. 1353, 1357 (D. Minn. 1995), aff'd, 100 F.3d 556 (8th Cir. 1996).

The Tribe's federally recognized status and corresponding sovereign immunity is beyond question. Congress enacted the Federally Recognized Indian Tribe List Act of 1994 (the "List Act") to require, among other things, that the Secretary of the Interior annually publish a list of federally recognized Indian tribes in the Federal Register. See 25 U.S.C. §§ 479a & 479a-1. The Tribe's recognition pre-dates the List Act (see Compl. ¶ 20) and the Tribe has always been listed in the Federal Register's list of "tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes." 74 Fed. Reg. 40218, 40221 (Aug. 11, 2009). "The listed entities are acknowledged to have the 'immunities and privileges' of Indian tribes." Id., see Pit River Home and Agric. Coop. Ass'n v. United States, 30 F.3d 1088, 1100 (9th Cir. 1994) ("Federally recognized Indian tribes enjoy sovereign immunity from suit.").

In 1980 Congress reaffirmed the Tribe's governmental status and its Reservation land base. Pub. L. No. 96-557, 94 Stat. 3262 (1980). Just nine years ago, Congress once again recognized the Tribe by enacting legislation providing that all of the lands held in trust for the Tribe, including those acquired under Section 5 of the Indian Reorganization Act, 25 U.S.C. § 465, are not subject to alienation or encumbrance. Native American Technical Corrections Act of 2004, Pub. L. No. 108-204, 118 Stat. 542 (2004). Once an Indian tribe is recognized, "the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government." 25 U.S.C. § 3601(2). Contrary to plaintiff's allegations, see Compl. ¶ 23, all recognized tribes operate on an equal footing under Federal law. 25 U.S.C. § 476(f).

Here, Congress has not limited the Tribe's sovereignty nor waived its immunity from suit; neither has the Tribe. Because "sovereign immunity is jurisdictional in nature," In re Prairie Island Dakota Sioux, 21 F.3d 302, 304 (8th Cir. 1994), citing FDIC v. Meyer, 510 U.S. 471, 475 (1994), an Indian tribe may assert immunity "at any stage of the proceedings." Hagen v. Sisseton-Wahpeton Cmty. College, 205 F.3d 1040, 1044 (8th Cir. 2000). Absent jurisdiction, a court "cannot proceed at all in any cause." Steel Co. v. Citizens For A Better Env't, 523 U.S. 83, 94 (1998) (citation omitted).

The Tribe is immune from Ms. Lightfoot's suit and must be dismissed from this lawsuit.

II. There Is No Case Or Controversy Between Ms. Lightfoot and the Tribe

"Article III of the Constitution limits the 'judicial power' of the United States to the resolution of 'cases' and 'controversies.'" Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 470-471 (1982). "[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). The Supreme Court has consistently identified 3 elements to the "irreducible constitutional minimum of standing":

> First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that

> the injury will be redressed by a favorable decision. The party invoking federal jurisdiction bears the burden of establishing these elements.

Lujan, 504 U.S. at 560-61 (internal citations omitted).

Here, Ms. Lightfoot's sole complaint against the Tribe is that its Domestic Relations Code allegedly violates 28 U.S.C. § 1360, even though no court has yet applied this Code, nor state law, nor for that matter Canadian law, to Ms. Lightfoot's pending divorce. As of this date, Ms. Lightfoot has not suffered any injury and she can only allege that the potential choice of law conflict "could change" the disposition of marital assets.[3]

Just as important, while Ms. Lightfoot and Mr. Thomas may eventually have a dispute as to which law controls, there exists no case or controversy between Ms. Lightfoot and the Tribe. See Valley Forge, 454 U.S. at 471 ("The requirements of Art. III are not satisfied merely because a party requests a court of the United States to declare its legal rights, and has couched that request for forms of relief historically associated with courts of law in terms that have a familiar ring to those trained in the legal process."). The Court's Article III inquiry is whether "a real, substantial controversy [exists] between parties having adverse legal interests, a dispute definite and concrete, not hypothetical or abstract." Babbitt v. United Farm Workers Nat'l Union, 442 U.S. 289, 298 (1979) (citations omitted). At best, Ms. Lightfoot has conjured a hypothetical dispute between herself and the Tribe.

[3] Complaint, ¶¶ 46, 76, and 88.

Ms. Lightfoot relies exclusively on 28 U.S.C. § 1360 to establish her putative claim against the Tribe, and even alleges that she has "federal rights under 28 U.S.C. 1360."[4] But this law, commonly known as Public Law 280, is a grant of limited civil jurisdiction to Minnesota courts to adjudicate civil disputes between private parties and the State's courts are required to give "full force and effect" to a "tribal ordinance or custom" "if not inconsistent with any applicable civil law of the State." 28 U.S.C. § 1360. Public Law 280 certainly does not provide Ms. Lightfoot with a federal right against the Tribe. Instead, it provides that the State court shall apply the Domestic Relations Code, if that Tribal law is not inconsistent with the State's civil law. Here, no State court has been asked to determine whether the Domestic Relations Code – as it pertains to Ms. Lightfoot and Mr. Thomas -- is consistent with State law or not. Until a State court rules on this specific and limited issue, Ms. Lightfoot's current complaint against the Tribe only presents a hypothetical dispute, which is not concrete or definite.[5] Indeed, since neither party to the divorce has availed himself or herself of the Minnesota courts, the question may never arise.

At a more overarching level, however, Ms. Lightfoot does not have a dispute with the Tribe itself. Ms. Lightfoot's dispute is with the potential application of Tribal law to her divorce proceedings. But the Tribe is not asserting a claim against Ms. Lightfoot and

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[4] Complaint at ¶ 13 and Prayer For Relief at ¶ 2.

[5] See Zanders v. Swanson, 573 F.3d 591, 593 (8th Cir. 2009) ("The difference between an abstract question and a 'case or controversy' is one of degree, of course, and is not discernible by any precise test. The basic inquiry is whether the conflicting contentions of the parties present a real, substantial controversy between parties having adverse legal interests, a dispute definite and concrete, not hypothetical or abstract.").

her aversion to Tribal law is not a cognizable dispute with the Tribe as a governmental entity.[6]

III. Federal Courts Cannot Issue An Advisory Opinion To Address The Choice Of Law Utilized By The Tribal Court Or Canadian Court In A Divorce Proceeding

A fair interpretation of Ms. Lightfoot's Complaint is that it requests a Federal Court to issue instructions on the choice of law to be applied in divorce proceedings by the Tribal and Canadian Courts. However, federal courts will not issue declaratory judgments to substantively direct the concurrent jurisdiction exercised by State and Tribal courts over a divorce proceeding. Confederated Tribes of the Colville Reservation v. Superior Court of Okanogan County, 945 F.2d 1138 (9th Cir. 1991). A Federal Court declaratory judgment "is simply not the proper means to untangle this jurisdictional knot." Id. at 1141. The rationale of Confederated Tribes is even more persuasive here because a declaratory judgment would be the equivalent of rendering an advisory opinion as this Court will not be hearing the actual divorce proceedings. Ankenbrandt v. Richards, 504 U.S. 689 (1992).

Further, there are only two substantive laws cited in Ms. Lightfoot's complaint – Public Law 280 and the Tribe's Domestic Relations Code. To address Ms. Lightfoot's contention that there is a potential conflict between State law and Tribal law, the Court would need to interpret the Domestic Relations Code. But "[j]urisdiction to . . . interpret tribal constitutions and laws . . . lies with Indian tribes and not in the district courts. In re

[6] At most, should Ms. Lightfoot's complaint proceed in a Tribal, State, or Canadian court, the Tribe may request leave to present its views on its own laws to that court at the appropriate time.

Sac & Fox Tribe of Mississippi in Iowa/Meskwaki Casino Litigation, 340 F.3d 749, 763 (8th Cir. 2003).

Further, the pending question of whether Tribal law, Minnesota law, or Canadian law applies to Ms. Lightfoot's divorce does not implicate any government as a party to this divorce proceeding. Because there is no basis for federal jurisdiction over the Tribe, there is no basis to enjoin the Tribe, the Tribe's court, or its Domestic Relations Code.

The Court should determine that it lacks jurisdiction to untangle the choice of law question so feebly presented by Ms. Lightfoot.

IV. Ms. Lightfoot's Claim Against The Tribe, Which Is Based On Public Law 280, Is Frivolous And Must Be Dismissed For Lack Of Subject Matter Jurisdiction

Of the jurisdictional statutes set forth in Ms. Lightfoot's Complaint at ¶ 14, the only one that could arguably apply, as her lawsuit pertains to the Tribe, would be federal question jurisdiction under 28 U.S.C. § 1331.[7] Yet a "claim invoking federal-question jurisdiction based upon 28 U.S.C. § 1331 . . . may be dismissed for want of subject-matter jurisdiction if it is not colorable, *i.e.*, if it is immaterial and made solely for the purpose of obtaining jurisdiction or is wholly insubstantial and frivolous." Arbaugh v. Y & H Corp., 546 U.S. 500, 513 n.10 (2006). Here, Ms. Lightfoot's attempt to drag the Tribe into her divorce proceeding constitutes a frivolous "federal question" because 28 U.S.C. § 1360 -- the asserted basis for federal question jurisdiction, see Compl. ¶¶ 75 and 87 -- does not confer federal court jurisdiction over the Tribe, nor waive its immunity.

[7] The declaratory judgment statute, 28 U.S.C. § 2207, provides a remedy only if there is a basis for federal jurisdiction.

Repeated decisions of the United States Supreme Court foreclose the use of 28 U.S.C. § 1360 as a method to bring a claim against an Indian tribe. The plain language of 28 U.S.C. § 1360 grants to certain states' courts the authority to resolve "private legal disputes between reservation Indians, and between Indians and other private citizens," and "authorizes application by the state courts of their rules of decision to decide such disputes." Bryan v. Itasca County, Minn., 426 U.S. 373, 383 (1976). But this grant of jurisdiction has its limits because "there is notably absent any conferral of state jurisdiction over the tribes themselves . . . ." Bryan, 426 U.S. at 388-89; Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng'g 476 U.S. 877, 892 (1986) (same). See also Oklahoma Tax Com'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 498 U.S. 505, 513 (1991) ("We have never held that Public Law 280 is independently sufficient to confer authority on a State to extend the full range of its regulatory authority, including taxation, over Indians and Indian reservations."). Ms. Lightfoot's assertion that this Court should direct the Tribe to apply the language of 28 U.S.C. § 1360(c) to the Domestic Relations Code is misplaced because the statute itself does not apply to the Tribe and provides no basis for a claim against the Tribe.

The Supreme Court has determined that nothing in Public Law 280 "should result in the undermining or destruction of such tribal governments as [do] exist and a conversion of affected tribes into little more than private, voluntary organizations – a possible result if tribal governments and reservation Indians were subordinated to the full panoply of civil regulatory powers, including taxation, of state and local governments." Bryan, 426 U.S. at 388. Since Bryan, the Supreme Court has confirmed that it has "never

read Pub. L. 280 to constitute a waiver of tribal sovereign immunity, nor found Pub. L. 280 to represent an abandonment of the federal interest in guarding Indian self-governance." Wold Eng'g, 476 U.S. at 892. Here, Ms. Lightfoot's federal question as it pertains to the Tribe is frivolous because Public Law 280 has been held not to provide a vehicle by which to hail an Indian tribe into federal court to answer a choice of law dispute among private parties, much less to compel a tribe to rewrite federally approved tribal law, here the Tribe's Domestic Relations Code.

Likewise, in Minnesota state courts it is well established that "the reach of congressionally authorized state court jurisdiction provided in so-called Public Law 280 states does not extend to tribes or tribal entities." Gavle v. Little Six, Inc., 555 N.W.2d 284, 289 (Minn. 1996). In determining that a non-Indian was not deprived of her day in court, but only of the court of her choice, the Minnesota Court of Appeals explained that Public Law 280 does not apply to Indian tribes:

> While Public Law 280 applies to actions involving "Indians," this grant of jurisdiction does not apply to Indian *tribes*, thus preserving the vitality of Indian sovereignty and preventing the transformation of Native American communities into little more than private, voluntary organizations. Thus, the federal statute's jurisdictional gap protects against infringement on the tribe's status as a sovereign.

Cohen v. Little Six, Inc., 543 N.W.2d 376, 381 (Minn. Ct. App. 1996). Public Law 280 "does not apply to Native American communities themselves." Dacotah Properties v. Prairie Island Indian Community, 520 N.W.2d 167, 172 (Minn. App. 1994); see also, Diver v. Peterson, 524 N.W.2d 288, 291 (Minn. App. 1994) (Public Law 280 "was intended to supplement tribal institutions, not limit them").

Thus, Public Law 280 provides no basis for a cause of action against the Tribe. Ms. Lightfoot's lawsuit against the Tribe presents no occasion for departure from settled law.

Conclusion

For the foregoing reasons, the Court should dismiss Ms. Lightfoot's lawsuit as it pertains to the Shakopee Mdewakanton Sioux Community for lack of jurisdiction.

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