14-1549

In the
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Ft. Yates Public School District #4	)	No. 14-1549
	)	
Plaintiff/Appellant/Cross Appellee,	)	
	)	
vs.	)	
	)	
Jamie Murphy for C.M.B. (a minor),	)	No. 14-1702
and Standing Rock Sioux Tribal Court,	)	
	)	
Defendant/Appellee/Cross Appellant ,	)	

On Appeal from the United States District Court for the District of North Dakota
(The Honorable Ralph R. Erickson)

District Court File No. 1:12-cv-00135

APPELLEE and CROSS-APPELLANT'S OPENING BRIEF

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June 6, 2014

SUMMARY OF THE CASE

Before C.M.B. attained majority, while a student at a high school operated by Fort Yates Public School District #4, C.M.B. was assaulted on the high school campus. Jamie Murphy, C.M.B.'s mother, brought a *pro se* Tribal Court action on behalf of her daughter to recover damages from the School District and her assailant. The School District sought dismissal of the lawsuit, claiming the Tribal Court did not have jurisdiction over it. After the Tribal Court denied their motion, the School District skipped the Tribal Court appeal process, and after C.M.B. had attained majority, filed suit against Murphy as C.M.B.'s guardian, and against the Tribal Court, seeking declaratory judgment and injunctive relief in federal court. Two weeks after the case was filed, before any defendant had entered an appearance, the court granted the request for a temporary restraining order and dismissed, *sua sponte*, the Tribal Court. Murphy entered a special appearance and moved for dismissal because she was no longer C.M.B.'s guardian. The parties responded to each other's motion. The court denied the relief sought by the School District, dismissed the case and held Murphy's motion was moot. Murphy asserts that the court committed error by failing to dismiss the named fictional defendant, "Jamie Murphy for C.M.B. (a minor)," and ruling on substantive issues.

The Appellee/Cross-Appellant requests 30 minutes for oral argument if the Court accommodates the Appellant's request therefor.

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JURISDICTIONAL STATEMENT

This appeal is from the United States District Court for the District of North Dakota, which did not have jurisdiction over the last remaining defendant, "Jamie Murphy for C.M.B. (a minor)," as C.M.B. was not a minor when the Plaintiff initiated the lawsuit below. Murphy filed a timely notice of appeal on March 20, 2014. For purposes of her appeal, Murphy takes the position that the District Court did not have jurisdiction over "Jamie Murphy for C.M.B. (a minor)" and thus, this Court does not have jurisdiction over the appeal other than for the limited purpose of remanding to the District Court with instructions to dismiss Jamie Murphy for C.M.B. (a minor) as a defendant and directing it to award her attorney fees.

STATEMENT OF ISSUES

1. Whether the District Court erred by finding a specially appearing, improperly-named litigant's jurisdictional motion moot after ruling on substantive issues relating to the important issue of tribal sovereignty was reversible error.

   Rule 12(b)(7), Fed.R.Civ.P.

2. Whether the District Court's ruling respecting a Tribal Court's sovereignty, and requiring a School District to resolve factual disputes and exhaust its

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tribal remedies in the Tribal Court, as is required by law and precedent, was error.

Montana v. United States, 450 U.S. 544 (1981)

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STATEMENT OF THE CASE

This case is a procedural and factual Superfund site. It arose, originally, as a result of events that took place on the Standing Rock Indian Reservation in North Dakota, in a high school. C.M.B. (a minor) was assaulted at least twice while attending Defendants' school she, like most children, was compelled to attend. The first assault was captured by the school's hallway video monitoring system. The assault was eventually terminated by an adult at the school who appeared to step in. In the video, C.M.B.'s classmate, A.K. (a minor), can be seen exiting the building after the assault and then returning again, shortly thereafter. After re-entering the building, A.K.'s second assault on C.M.B. near the school's administrative offices is out of the view of any cameras and was not captured on film or, if it was, no such video was turned over in discovery before the School District took this matter to federal court.

Nearly two years later, on or about November 29, 2011, when C.M.B. was 17 years old and a senior in high school, Jamie Murphy (hereinafter "Murphy"), pursued *pro se* a civil claim in the Standing Rock Sioux Tribal Court against A.K., against Plaintiff/Appellant Fort Yates Public School District #4 (hereinafter "School District") and against the Standing Rock Community School (hereinafter "Standing Rock School"), for damages resulting from, among other things, the two aforementioned assaults.

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School District moved to dismiss the Tribal Court action. Standing Rock School asserted a claim of sovereign immunity. On March 7, 2012, then-Tribal Court Chief Judge William P. Zuger denied the School District's motion to dismiss the claim against the School District but dismissed the Standing Rock Community School, with prejudice, because it was found to be part of a political subdivision of the Tribe, which, the Tribal Court ruled, retains sovereign immunity.

At the time of Chief Judge Zuger's ruling, Murphy was still proceeding *pro se*. Thereafter, the undersigned entered an appearance as counsel for Murphy in her capacity as guardian for C.M.B., filing an Amended Complaint consolidating the various claims then pending.

C.M.B. attained the age of eighteen (18) on August 8, 2012, five months after Judge Zuger issued his ruling.

Two months after C.M.B. turned eighteen years of age, on October 9, 2012, after C.M.B. had graduated from School District's high school, Plaintiff School District filed this declaratory judgment action in Federal Court, also seeking an emergency temporary restraining order (TRO) barring "Jamie Murphy for C.M.B. (a minor)" from taking any further action, whatsoever, in Tribal Court. The defendants named in that case were "Jamie Murphy for C.M.B. (a minor) and Standing Rock Sioux Tribal Court."

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In its Complaint, the relief sought by the School District included District Court rulings that "C.M.B. or anyone acting on her behalf" be prohibited from taking this action or that the Court be allowed to award remedies sought by C.M.B. (Complaint at p. 4). C.M.B. was an adult at the time the Complaint was filed in Federal Court. She has never been named as a party herein, and never served with any motion or pleading herein.

On October 23, 2012, before any named defendant – fictional or otherwise – had made any appearance in Federal District Court, fourteen (14) days after the lawsuit was filed, the District Court granted the School District's request for a TRO and also dismissed, *sua sponte*,"Standing Rock Sioux Tribal Court" from the action. "Standing Rock Sioux Tribal Court" (hereinafter "the Tribal Court") did not ever enter an appearance as a party to this case before the District Court. The School District never made an argument to the District Court, below, that its *sua sponte* dismissal of the Tribal Court was improper. The Tribal Court did not ever enter an appearance as a party in the case before the District Court, though the Tribe itself did seek leave to file briefs as *Amicus*, doing so on November 5, 2012, after receiving the District Court's permission to do so.

On October 31, 2012, Jamie Murphy, individually, made a special appearance. She asserted, through a motion and brief, that she could not be sued as guardian for her daughter who was, at the time of the School District's federal

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lawsuit, no longer a minor. Murphy argued that once C.M.B. turned 18, Murphy could no longer be sued in her capacity as a guardian of C.M.B. Murphy argued "Jamie Murphy for C.M.B. (a minor)" was an improper party that exists only in the mind of the Plaintiff and that – because there remained no other non-fictional defendants – the entire case had to be dismissed.

Through stipulation filed November 20, 2012, the parties agreed each side could have an extension of time to respond to the pending motions filed by the other side. The District Court issued an order on November 26, 2012, approving the stipulation.

A Status Conference was held nearly a year later on September 3, 2013, after which the District Court directed each counsel to respond to the other side's pending motion.

On September 17, 2013, Murphy responded to the Plaintiff's motion, re-asserting her Rule 12(b)(7) motion, and adding a cursory analysis of the substantive arguments made by the School District. She again asserted she should not have to respond to the School District's substantive claims since she was not and could not be sued as a guardian for her emancipated, adult offspring.

On October 1, 2013, the School District filed its reply to Murphy's original Rule 12(b)(7) motion, and also filed a reply to Murphy's response brief.

On the morning of February 4, 2014, the case was removed, by order, from the desk of Judge Daniel L. Hovland and Magistrate Charles S. Miller, Jr., and reassigned to Judge Ralph R. Erickson. On the afternoon of February 4, 2014, Judge Erickson issued for the District Court its Order dismissing the case and remanding the case to the Tribal Court. Judge Erickson also ruled Murphy's Rule 12(b)(7) motion was moot because he had dismissed the case and remanded it.

To this day, neither the Tribal Court nor Murphy has ever made a formal appearance as a party. Neither has ever put in an Answer. Murphy only made a cursory argument regarding the substantive issues because she did not believe she was properly named as a party. Though the Tribal Court has never appeared as a party, the Standing Rock Sioux Tribe has only submitted briefs, below, as *Amicus Curiae*.

As was true at all times during the course of Plaintiff's federal court action, Jamie Murphy has never been named, individually, as a defendant in this case, nor has she ever been served with any pleadings in her individual capacity. Nothing in the record indicates C.M.B. was ever named as a party to this litigation, and nothing in the record indicates she was ever served with any pleadings herein. "Jamie Murphy for C.M.B. (a minor)" is and at all times relevant to the plaintiff's federal court action always has been a fictional character and, as such, has never entered an appearance.

SUMMARY OF THE ARGUMENT

For nearly a year, the Plaintiff in this case had an opportunity to take action to correct an error in its pleadings; namely, it failed to correctly name a Defendant. It could have corrected its error in a number of ways but failed to do so. The District Court never ruled on Jamie Murphy's Rule 12(b)(7) motion and, instead, considered the substantive issues in the Plaintiff/Appellant's case, then finding Murphy's motion moot without even giving her an opportunity to appear and make a complete record or defend against the Plaintiff's claim.

If the District Court had first properly considered Murphy's Rule 12(b)(7) motion, it would have dismissed the Plaintiff's case. The case would have been remanded to the Tribal Court. Many outcomes, there, are conceivable. One possibility is that the Tribal Court could have considered other issues and motions by the parties and dismissed the case entirely. That would have saved the District Court and this court the time of having to address this procedural and legal morass.

ARGUMENT

I. Jamie Murphy's Cross-Appeal: The District Court Erred By Failing To First Address Murphy's Rule 12(b)(7), FedRCivP, Motion Before Addressing Any Substantive Issue

Rule 12(b)(7) of the Federal Rules of Civil Procedure indicates a motion asserting the defense of "failure to join a party under Rule 19" must be made

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before pleading if a responsive pleading is allowed. Pursuant to Rule 19 of the Federal Rules of Civil Procedure, a nonparty is indispensable to an action if (1) the nonparty is necessary; (2) the nonparty cannot be joined; and (3) the action cannot continue in equity and good conscience without the nonparty. *See* U.S. ex rel. Steele v. Turn Key Gaming, Inc., 135 F.3d 1249, 1251 (8th Cir. 1998). An "indispensable party" is one whose interests are so bound up in the subject matter of the litigation and the relief sought that the court cannot proceed without them, or proceed to a final judgment without affecting their interests. *See* Division 525, Order of Ry. Conductors of America v. Gorman, 133 F.2d 273 (8th Cir. 1943). Indispensability may be established by a defendant who submits a minimum amount of evidentiary materials from which a court can make the findings of fact on which the claim of failure to join is based. *See* Dunlop v. Beloit College, 411 F.Supp 3989, 400 (Wis. 1976).

After the District Court dismissed the Plaintiff's claim against the Tribal Court, the only remaining defendant in this case was "Jamie Murphy for "C.M.B. (a minor)." The Plaintiff's claim in this action against "Jamie Murphy for C.M.B. (a minor)" is presumably based upon Rule 4(g), F.R.Civ.P., which allows a plaintiff to bring an action against a minor child by following the state law regarding service upon that minor child. While an interesting analysis might be had regarding North Dakota state law regarding proper service upon a minor child,

it would not be relevant to this case because at the time the School District initiated this federal court action, C.M.B. was not a minor child. Furthermore, nothing in the pleadings alleges C.M.B. is or was an incapacitated adult, or that Jamie Murphy, individually, has been named a guardian for her adult child, C.M.B. Jamie Murphy has not been named as a defendant in this lawsuit in her individual capacity.

The existence of Rule 4(g), Fed.R.Civ.P. – by telling us the guardian of a minor or incapacitated person must be sued to get jurisdiction over the minor or incapacitated person, the maxim of *inclusion unius est exclusion alterius* – would suggest that it is improper to name as a defendant the parent of a non-incapacitated adult. The proper person to name as a defendant would be the adult, herself.

An analysis of the three considerations in Rule 12(b)(7) motion, thus would be as follows:

(1) **The non-party is necessary**. If it is the intention of the Plaintiff to bring an action against C.M.B., it is not possible to do so by bringing an action only against C.M.B.'s mother, Jamie Murphy. In an action against C.M.B., who at the time the School District initiated this case was an adult, it would seem clear C.M.B. should be named as a party.

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(2) **The non-party cannot be joined**. Since Standing Rock Tribal Court is no longer a defendant to this case and Jamie Murphy cannot be sued as a guardian for her emancipated, adult offspring under Rule 4(g), Fed.R.Civ.P., there is no non-fictional defendant in this litigation. As such, the case was and is, on its face, defective in its entirety. If the District Court had properly dismissed "Jamie Murphy for C.M.B. (a minor)" from the case, the lawsuit itself – and any orders issued by the Court – would have been defective as not having any controlling authority over anybody but the Plaintiff. The District Court committed error by dismissing the civil case without first ruling upon the question of whether there was a non-fictional Defendant named in the litigation.

(3) **The District Court should not have ruled upon any substantive claims made by the Plaintiff in equity and good conscience without first addressing Murphy's Rule 12(b)(7) motion and having a properly named defendant.** It was not fair, equitable, or just for the School District in this case to initiate an action against C.M.B (an adult) by suing C.M.B.'s parent, Jamie Murphy as C.M.B.'s guardian when Jamie Murphy was no longer, in fact, C.M.B.'s guardian. To allow the case to continue without a properly-named defendant while expecting a

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fictional character to defend against the Plaintiff's various legal assertion was inequitable and unjust.

II. Jamie Murphy's Appellee Issues: The Appellant Failed to Resolve Critical Factual Issues and Exhaust Tribal Court Remedies Before Seeking Federal Court Intervention

Regardless of whether the Plaintiff has named a proper Defendant, this court should decline to take jurisdiction over this case. While the Standing Rock Tribal Court did not ever enter an appearance in this litigation, the Standing Rock Sioux Tribe did file an Amicus Curiae Brief in which it provides a lengthy, detailed, thorough analysis of most of the legal issues relating to the requirement that the School District exhaust its Tribal Court remedies and the issue of the Tribal Court's colorable claim of jurisdiction with regard to the matter in dispute. It would be overkill for Jamie Murphy – who technically should not even be a party to this litigation in the first place – to repeat all of the analysis contained in the Tribe's brief, so she will not do so other than to agree and join in that brief, but to briefly touch on a few points of significance.

First, this Court is undoubtedly aware that many Indian Tribes have formal tribal court systems to adjudicate disputes arising on their reservations. See generally Stephen L. Pevar, The Rights of Indians and Tribes (Fourth Edition), 88-90 (2012); United States Commission on Civil Rights, The Indian Civil Rights Act 29-31 (1991); R. Strickland, et al., Felix S. Cohen's Handbook of Federal Indian

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Law 332-335 (1982). Today, "tribal justice systems are an essential part of tribal governments." 25 U.S.C. 3601(5); accord, Iowa Mutual Ins. Co. v. LaPlante, 480 U.S. 9, 14-15 (1987). Their number has grown sharply in the last 37 years from 117 in 1976, see Santa Clara Pueblo v. Martinez, 436 U.S. 49, 65 n.21 (1978), to at least 288 today, see U.S. Dep't of Interior, Bureau of Indian Affairs, Budget Justifications, F.Y. 2013 at IA-PSJ-13 (2012). At the same time, the number of cases in tribal court dockets has steadily increased, accompanied by corresponding advances in the professional qualifications of tribal judges and lawyers.[1]

[1] See Testimony of Kevin K. Washburn, Dean, University of New Mexico School of Law, United States Sentencing Commission, Phoenix Regional Hearing, (January 20-21, 2010) ("A number of facts have changed since the Commission first considered how to treat tribal convictions and I would argue that it should be reconsidered in light of new circumstances. First, tribal courts have become much more firmly engrained in the fabric of American jurisprudence since. Since we are meeting in Arizona, let me cite a couple of eminent local judges on this point. According to Justice Sandra Day O'Connor, "tribal courts, while relatively young, are developing in leaps and bounds." Likewise, Ninth Circuit Judge William C. Canby, Jr., has said that "tribal courts today are infinitely more competent and better staffed than they were thirty or even fifteen years ago." These statements were made in the 1990s and developments have continued apace. Tribal courts are, more than ever, a significant part of the nation's web of judicial systems.

Tribal courts have also gained much wider acceptance in the state courts. State courts throughout the country have begun to rely more and more on tribal criminal convictions in a variety of circumstances. For example, state courts have relied on tribal convictions: 1) for assessment of an offender's general criminal history in sentencing, and, 2) for use as a predicate offense for prosecution for an aggravated offenses, such as aggravated DWI or domestic violence prosecutions, 3) for driver's license suspension of revocation, 4) for treatment of a juvenile as an adult

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The government of the United States of America says – through all three federal branches – that it is commited to the principals of self-determination and self-governance of Indian Tribes. See, e.g., 25 U.S.C. § 3601; Iowa Mutual Ins. Co. v. LaPlante, 480 U.S. 9, 14-15 (1987) and Executive Order – Establishing the White House Council on Native American Affairs (dated June 26, 2013) (http://1.usa.gov/1afpccm).

As this appellate brief was being finalized, the President of the United States announced his intention to visit the Standing Rock Sioux Indian Reservation. In an Op-Ed, the President wrote for the Indian Country Today online publication, the following:

> As I've said before, the history of the United States and tribal nations is filled with broken promises. But I believe that during my Administration, we've turned a corner together. **We're writing a new chapter in our history – one in which agreements are upheld, tribal sovereignty is respected, and every American Indian and Alaskan Native who works hard has the chance to get ahead.** That's the promise of the American Dream. And that's what I'm working for every day – in every village, every city, every reservation – for every single American.
>
> President Barack Obama, Indian Country Today, http://1.usa.gov/1hBF8vc (June 5, 2014) (emphasis added)

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for purposes of felony prosecution, and 5) for purposes of sex offender registration. In addition to the state courts, Congress has also evinced more and more respect for tribal courts." [Citations omitted.])

The American Government seems committed to respecting tribal sovereignty. Central to tribal sovereignty is the effectiveness of tribal institutions, including tribal courts.

The three branches of North Dakota's government have similarly expressed their respect for tribal governments. See, e.g., Gustafson, et al. v. Estate of Poitra, et al, 2011 ND 150, ¶10 ("Relative to the issue of state court jurisdiction, if there is an available forum in the tribal courts, considerations of tribal sovereignty and the federal interest in promoting Indian self-governance and autonomy arise."),

It is a long-standing rule that Indian tribes possess inherent sovereign powers, including the authority to exclude (New Mexico v. Mescalero Apache Tribe, 462 U.S. 324, 103 S.Ct. 2378, 76 L.Ed.2d 611 (1983)), unless Congress clearly and unambiguously says otherwise. United States v. Lara, 541 U.S. 193, 124, S.Ct. 1628, 158 L.Ed.2d 420 (2004). From a tribe's inherent sovereign powers flow lesser powers, including the power to regulate non-Indians on tribal land. South Dakota v. Bourland, 508 U.S. 679, 688 (1993). One way tribal sovereignty is honored and respected is through the federal government's respect for tribal government branches and institutions, including their tribal courts.

Out of respect for Tribal Courts, federal courts generally "should decline to entertain challenges to a tribal court's jurisdiction until the trial court has had a full

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opportunity to rule on its own jurisdiction." Elliot v. White Mountain Apache Tribal Court, 566 F.3d 842, 844 (9th Cir.) cert. denied, 130 S.Ct. 624 (2009). Where a tribe has an appellate court, non-Indians must exhaust that avenue, too, before submitting the jurisdiction question to a federal court. Iowa Mutual Ins. Co. v. LaPlante, 480 U.S. 9, 16-17 (1987) ("The federal policy of promoting tribal self-government encompasses the development of the entire tribal court system, including appellate courts.").

The Eighth Circuit appears to have adopted a policy that the exhaustion rule is mandatory and not discretionary. For example, in Gaming World Intern., Ltd. V. White Earth Band of Chippewa Indians, 317 F.3rd 840 (8th Cir, 2003), the Court required the Plaintiff to pursue its claim, first, in tribal court.

> We conclude that the district court erred by not deferring for exhaustion of tribal court remedies and by proceeding to rule on the motion to compel arbitration. Our decision in Bruce H. Lien Co. and those in similar cases decided by the Fifth, Ninth, and Second Circuits teach that exhaustion should be required when a party tries to avoid tribal court jurisdiction by seeking an order to compel arbitration in federal court. This is especially true if the underlying dispute involves activities undertaken by tribal government within reservation lands. Failure to require exhaustion in these circumstances would undermine the important federal policy to foster tribal self government through the development of tribal courts as enunciated in Nat'l Farmers Union Ins. Co. and Iowa Mut. Ins. Co…
>
> Gaming World Intern., Ltd. v. White Earth Band of Chippewa Indians, 317 F.3rd 840, 851-52 (8th Cir. 2003).

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The Standing Rock Sioux Tribe Code of Justice establishes an appellate court within its court system. The Supreme Court of the Standing Rock Sioux Tribe is established by section 1-201 of the Standing Rock Tribal Code of Justice (SRTCOJ) which reads as follows: "There is hereby created a Supreme Court of the Standing Rock Sioux Tribe."

The Supreme Court of the Standing Rock Sioux Tribe has "exclusive jurisdiction of all appeals from final orders and judgments of the Standing Rock Tribal Court." Section 1-202, SRTCOJ.

Fort Yates Public School District #4 may attempt to assert that it would be burdensome for it to be forced to exhaust its Tribal Court remedies because an interlocutory appeal may be limited in Tribal Court. But the requirement of a "final order or judgment" is not unique to the Standing Rock Tribal Court. There are similar "final judgment" rules in federal and state courts, as well. See, e.g., 28 U.S.C. § 1291; N.D.C.C. § 29-28-02. The requirement that, with few exceptions, appeals can only be taken from final orders is frequently burdensome and expensive for litigants in federal and state courts, including the present court, but that has not caused federal or state courts to abandon or disregard their similar "final judgment" rules. There is no reason for this court to rule that the Standing Rock Tribal Court's "final judgment" rule is somehow unduly burdensome to the School District.

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This Court should, out of respect for the U.S. Courts' general recognition of the comity of tribal courts, allow the question of jurisdiction to first be fully addressed in the Tribal Court and through any appeal process available in the Standing Rock Sioux Tribe's judicial system. At the same time, the Tribal Court would have an opportunity to address any other factual issues the School District failed to raise in Tribal Court, as well.

CONCLUSION

Fort Yates School District #4 is the school district that operates the high school where Jamie Murphy's daughter, C.M.B., graduated from high school. While attending high school, C.M.B. was violently attacked while walking down a school hallway. While C.M.B. was a minor, Jamie brought a civil case against the school district in Tribal Court. The School District challenged the Tribal Court's jurisdiction, the School District did not raise any of the normal "land status" issues that should have been presented to the Tribal Court, it did not prevail, and then it chose to skip the normal tribal judicial system's appeal process and – after C.M.B. had turned 18 – brought this federal court action against Jamie, as C.M.B.'s parent or guardian.

On the date when the School District initiated this case, "C.M.B." had reached the age of majority, and was 18 years of age. At the time of this writing C.M.B. is now 19 years of age and is not a named defendant in this case. She will

likely be 20 years old before the Eighth Circuit issues its decision herein. She has never had an opportunity to present her position with regard to any of the issues raised by the Court's temporary order, or by any party, or amicus curiae, in any way. The only person remaining as a defendant when the case was dismissed by the District Court was Jamie Murphy in her capacity as C.M.B's guardian, which she, at the time, she was not. It is undisputed that Jamie Murphy is not C.M.B.'s guardian and never was during the pendency of the case before the District Court, or now. So there is no legitimate defendant in this case at this time, nor has there ever been.

The Onion headline for a story about this case might be "Plaintiff attempts to bootstrap its status as a plaintiff in a case against nobody by not exhausting its tribal court remedies." None of this makes any sense. The District Court should have rejected the Plaintiff's request that it take jurisdiction over this matter, should have denied its request for a permanent injunction against an improperly-named party, and should have sent this case back to the Tribal Court where the factual and legal issues could have been fully litigated, appealed (if necessary) within the tribal court appellate system and resolved or later-presented here, if and when proper parties might be named.

Jamie Murphy should have been awarded the attorney fees she requested. She was served legal pleadings in a case that kind of appeared to name her as a

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defendant and was compelled to put in a special appearance to clear up the confusion created by the School District. The School District surely knew the birth date of one of its students or surely must have understood that one of its graduates would eventually turn 18 years old. The School District may have a bottomless pit of money, but Murphy does not. She has incurred significant debt defending against a case she should not even be involved in.

Murphy asks that this court remand this case to the District Court with a direction that Murphy's Rule 12(b)(7) motion be granted, that the case be dismissed and remanded to the Tribal Court, and that she be awarded her attorney fees for defending this matter before the District Court, and here.

Respectfully submitted.

Dated this 5th day of June, 2013.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rules 28(a)(11) and 32(a)(7)(C) of the Federal Rules of Appellate Procedure, I hereby certify that the textual portion of the foregoing brief (exclusive of the disclosure statements, tables of contents and authorities, certificates of service and compliance, but not including footnotes) contains 4,535 words as determined by the word counting feature of Microsoft Word 2013, or fewer.

Pursuant to 8th Circuit Rule 28A(h), I also certify that the electronic files of this Brief and any accompanying Addendum have been submitted to the Clerk via the Court's CM/ECF system. The files have been scanned for viruses and are virus-free.

/s/ Chad C. Nodland .
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CERTIFICATE OF SERVICE

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure, and 8th Circuit Rule 25A(a), I hereby certify that on the 5th day of June, 2014, the Appellee and Cross-Appellant's Opening Brief was filed with the Clerk of Court through the Court's CM/ECF system, which served electronic copies on the following registered participants:

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I further certify that on the _____ day of June, 2014, I have mailed the foregoing document, along with any Addendum to Appellee and Cross-Appellant's Opening Brief, by First Class Mail, postage prepaid, to the following:

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DATED this _____ of June, 2014.

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